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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 JUAN JOSE MARTINEZ-MADERA,  
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Petitioner,

vs.

MICHAEL CHERTOFF, Secretary of the  
Department of Homeland Security;  
MICHAEL B. MUKASEY, Attorney  
General; JULIE L. MYERS, Assistant  
Secretary, Board of Immigration and  
Customs Enforcement (ICE); ROBIN  
BAKER, San Diego ICE-Field Office District  
Director; ROBERT G. RILLAMAS,  
Assistant ICE District Director–El Centro  
Field Office; JOEL MATA, Supervisor of  
Deportation Officers, El Centro Processing  
Center,

Respondents.

CASE NO. 07CV2237 JLS (WMc)

**ORDER (1) GRANTING  
EXTENSION OF TIME TO FILE  
TRAVERSE, (2) DENYING EX  
PARTE MOTION TO DISMISS OR  
SET HEARING DATE, and (3)  
DIRECTING RESPONDENTS TO  
SHOW CAUSE WHY COURT  
SHOULD NOT GRANT MOTION  
FOR APPOINTMENT OF  
COUNSEL**

(Doc. Nos. 12, 19)

**BACKGROUND**

On November 26, 2007, petitioner Juan Jose Martinez-Madera (“petitioner”) filed a  
petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. (Doc. No. 1.) On December 5,  
2007, the Court ordered respondents to show cause why the petition should not be granted. (Doc.  
No. 4.) In its Order to show cause, the Court denied without prejudice petitioner’s motion for

1 appointment of counsel to assist him in prosecuting his § 2241 petition. (Id. at 2:2-24.)  
2 Respondents requested and received an extension of time to file their return to the petition. (Doc.  
3 Nos. 6-7.) Presently before the Court is petitioner's request for a one-month extension to file his  
4 traverse. (Doc. No. 12.) Petitioner filed his request on February 19, 2008, prior to the traverse  
5 deadline, and cited his unfamiliarity with law and computers and limited access to the law library.  
6 (Id.)

7 On January 22, 2008, petitioner filed a motion for class certification of similarly situated  
8 detainees subject to indefinite detention by the Board of Immigration and Customs Enforcement  
9 and the Department of Homeland Security. (Doc. No. 18.) Petitioner's motion was likewise  
10 accompanied by a motion for appointment of counsel, which stated that petitioner "w[ould] be  
11 unable to effectively articulate and state his claims" if he had to proceed pro se. (Doc. No. 14.)  
12 Presently before the Court is respondents' ex parte application to dismiss the motion for class  
13 certification for failure to comply with the Local Rules or, in the alternative, to set a hearing date  
14 and time so that respondents may file their opposition. (Doc. No. 19.)

#### 15 **MOTION FOR EXTENSION TO FILE TRAVERSE**

16 Where a party must act within a specified time and requests an extension before the  
17 specified time expires, the Court may extend the time for good cause. Fed. R. Civ. P. 6(b)(1)(A).  
18 Here, petitioner filed his request for an extension prior to the February 29, 2008 deadline for filing  
19 the traverse. In light of the reasons stated in petitioner's motion, the Court finds good cause and  
20 **GRANTS** petitioner an extension until March 31, 2008 to file his traverse.

#### 21 **EX PARTE APPLICATION ON CLASS CERTIFICATION MOTION**

22 Respondents ask the Court to dismiss petitioner's motion for class certification because  
23 petitioner failed to comply with the Local Rules by not including a notice of motion with a time  
24 and date for hearing and by failing to include a memorandum of points and authorities. The Court  
25 finds that its authority to dismiss a motion for failure to comply with the Local Rules is  
26 discretionary. See Civ. L.R. 41.1(b) ("failure to comply with the provisions of the local rules of  
27 this court may also be grounds for dismissal") (emphasis added). The Court declines to exercise  
28 that authority here and **DENIES** respondents' request to dismiss the motion for class certification

1 for failure to comply with the Local Rules.

2 At this time, the Court also **DENIES WITHOUT PREJUDICE** the respondents' request  
3 to set a time and date for hearing the motion for class certification. Instead, the Court **ORDERS**  
4 respondents to show cause why the Court should not appoint counsel to assist petitioner in briefing  
5 the motion for class certification. As discussed in a prior Order, this Court has discretion to  
6 appoint counsel for petitioner in "exceptional circumstances," an inquiry which requires the Court  
7 to consider "'the likelihood of success on the merits and the ability of the plaintiff to articulate  
8 [his] claims pro se in light of the complexity of the legal issues involved.'" Terrell v. Brewer, 935  
9 F.2d 1015, 1017 (9th Cir. 1991) (quoting Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir.  
10 1986)). In previously denying petitioner's motion for appointment of counsel with respect to his  
11 individual § 2241 petition, the Court observed that a motion for class certification would amount  
12 to "a procedural maneuver that would make the legal issues considerably more complex[.]" (Doc.  
13 No. 4, at 2:18-19.) The Court must now decide whether this case—and the motion for class  
14 certification, specifically—now provides the "exceptional circumstances" making it appropriate  
15 for the Court to appoint counsel. The Court intends to decide the issue of appointment of counsel  
16 before the Court decides the motion for class certification.

### 17 CONCLUSION

18 The Court **GRANTS** petitioner's request for an extension to file his traverse. Petitioner  
19 **SHALL FILE** the traverse on or before March 29, 2008.

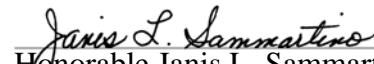
20 The Court **DENIES** respondents' ex parte application to dismiss petitioner's motion for  
21 class certification or, in the alternative, to set a time and date for hearing petitioner's motion for  
22 class certification. Instead, respondents **SHALL FILE** a return to the Court's Order to show  
23 cause why the Court should not grant petitioner's motion for appointment of counsel to assist  
24 petitioner with the present motion for class certification. Respondents' return **SHALL NOT**  
25 **EXCEED** seven (7) pages, exclusive of any supporting evidence, and **SHALL BE FILED** within  
26 two (2) weeks of the date that this Order is electronically docketed.

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1 IT IS SO ORDERED.

2 DATED: March 14, 2008

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4 Honorable Janis L. Sammartino  
5 United States District Judge  
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